

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 97-911

February 3, 1998

BANGOR HYDRO-ELECTRIC COMPANY,  
Request for Approval of Stock Warrants  
and Corporate Guarantee Related to  
PERC Restructuring Transaction

ORDER

WELCH, Chairman; NUGENT and HUNT, Commissioners

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I. SUMMARY

In this Order, we approve the request of Bangor Hydro-Electric Company (BHE or the Company) to issue 2,000,000 stock warrants and to provide an unconditional corporate guarantee of the debt of the Penobscot Energy Recovery Company (PERC) obtained through the Finance Authority of Maine (FAME); both approvals are in connection with the restructuring of the power purchase agreement (PPA) between BHE and PERC.<sup>1</sup> The Commission approved the restructuring agreement (Agreement) in Docket No. 97-451 through an Order issued on August 27, 1997, and an Order on Reconsideration issued September 17, 1997.

II. DISCUSSION AND ANALYSIS

In Docket No. 97-154, the Commission approved a rate stabilization agreement that was entered into by the Company, PERC and the Municipal Review Committee, Inc. (MRC) that restructures the existing PPA between the Company and PERC. As part of the PPA restructuring arrangement the Company agreed to provide an up-front payment of \$6.0 million to PERC and additional payments of \$4.0 million to be paid over the next 4 years. The total of \$10 million in payments from BHE is to be placed in an interest-earning reserve account that will be distributed to the parties to the restructuring agreement at the end of the term of the contract according to the so-called "waterfall" order of payout. In addition, BHE will continue to purchase power from the PERC facility at the rates contained in the original contract, but the Company, PERC and the MRC will share equally in the "profits" of the facilities after all obligations have been met in the order as spelled out in the

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<sup>1</sup> The Office of the Public Advocate and Mr. Ralph Coffman petitioned to intervene. Parties were provided an opportunity to comment on the filing. The Public Advocate indicated he had no objection to approving BHE's request. Due to the ice storm, Mr. Coffman requested an extension to file comments until January 26, 1998. The request was granted. Mr. Coffman did not file comments.

waterfall provision. A key part of the restructuring agreement is the refinancing of PERC's current debt obligation, which has a remaining term of about 6 years, by the issuance of approximately \$50 million in 20-year notes through FAME.

Although the FAME loan will be made to PERC, FAME has required that Bangor Hydro provide an unconditional corporate guarantee of the loan amount in case the PERC facility shuts down or is otherwise unable to meet its debt obligations. This provision was part of the rate stabilization agreement that the Commission approved in Docket No. 97-451, and because no new information has come to light that suggests a corporate guarantee is unreasonable, we will approve the Company's request to provide a guarantee of the FAME loan to PERC.

As for the Company's request to issue two million common stock warrants, that matter also was considered in our Order in Docket No. 97-451. As part of the Agreement, BHE agreed to issue one million warrants to PERC and one million warrants to the MRC. The warrants will be issued at or about the time of the formal signing of the Agreement, and each warrant permits the holder to purchase one share of the Company's common stock at a price of \$7.00 per share. The warrants become exercisable in blocks of 500,000 at 12-month intervals beginning 9 months after the Agreement closing, and they expire 10 years from the date of issuance. The warrants contain terms that allow the Company to pay cash in the amount of the difference between the market price and the exercise price in lieu of actually issuing shares of stock. Also, the holders have the option to undertake a "cashless exercise" that permits them to obtain shares by exercising additional warrants, rather than actually paying cash. The warrants also contain antidilution provisions that provide for an adjustment of the numbers of shares that may be purchased, if any of several events occur that would otherwise dilute the value of the warrants in relation to the total number of shares authorized and outstanding. Finally, the warrants contain provisions that require the Company to register the warrants under the Securities Act of 1933 under certain conditions that are spelled out in the warrants.

As required under 35-A M.R.S.A. §3156, our approval of the Agreement requires that the Company be allowed to include in its rates all of the costs associated with the Agreement. In Docket No. 97-451 the Company agreed to limit the exposure of ratepayers to the cost of the warrants. Bangor Hydro stipulated that it would seek to recover from ratepayers the difference between the \$7.00 exercise price and the higher of the \$15.00 per share or the Company's book value per share at the time of exercise. We found this to be a reasonable method by which to limit the exposure of ratepayers to the costs of the Agreement. Again,

because we find no change in circumstances since we issued our Orders in Docket No. 97-451, we will authorize the issuance of the warrants under the same condition regarding the amount of recovery from ratepayers that was included in that Docket.

Therefore, we

O R D E R

1. That Bangor Hydro-Electric Company is authorized to issue 2,000,000 common stock warrants pursuant to the terms described in its application.
2. That the Company may seek recovery of the costs of the warrants, if and when exercised, in accordance with the condition contained in our Order in Docket No. 97-451.
3. That Bangor Hydro-Electric Company is authorized to provide its unconditional corporate guarantee of the loan to be made by the Finance Authority of Maine to the Penobscot Energy Recovery Company, as required under the terms of the Rate Stabilization Agreement approved by the Commission in Docket No. 97-451.
4. That a copy of this Order be sent to Bangor Hydro-Electric, and this docket be closed.

Dated at Augusta, Maine this 3rd day of February, 1998.

BY ORDER OF THE COMMISSION

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Dennis Keschl  
Administrative Director

COMMISSIONERS VOTING FOR: Welch  
Nugent  
Hunt